

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. A-6607

PETITION OF ROBIN KATCHER

OPINION OF THE BOARD

(Opinion Adopted April 10, 2019)
(Effective Date of Opinion: April 18, 2019)

Case No. A-6607 is an application for a variance necessary for the proposed construction of a second floor addition on an existing house. The proposed construction requires a variance of 2.50 feet, as it is within 4.50 feet of the right side lot line. The required setback is seven (7) feet, in accordance with Section 59-7.7.1.D.2.c of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on April 10, 2019. Petitioner Robin Katcher appeared at the hearing with Tonya Katcher, and was assisted by her architect, Saskia van Groningen.

Decision of the Board: Variance **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 39, Block 66A, Blair Takoma Sec. 1 Subdivision, located at 720 Gist Avenue, Silver Spring, MD, 20910 in the R-60 Zone. The Justification Statement ("Statement") submitted with the variance application indicates that at 50 feet wide and 5,000 square feet in area, the subject property is substandard for the R-60 Zone in terms of size and width. See Exhibit 3.
2. The Statement and Supplemental Variance Criteria indicate that the subject property was platted in 1924 and contains an existing home that was constructed in 1925, and that is set back only 4.5 feet from the side lot line, making the house an existing legal nonconforming structure. These documents further indicate that the proposed second story addition will use the footprint of this legal nonconforming structure, but will not extend it. See Exhibits 3 and 9.

3. The Statement states that the grant of the proposed variance will not be impede and will allow for "continuing enjoyment of the abutting properties," noting in support of this that "the lots in the neighborhood have been set up in such a way that although the side yard setback in almost all of the lots on this street is only 4.5 feet on one side, it is usually over 20 feet on the other side, creating in effect a substantial setback between the actual houses." See Exhibit 3. The Supplemental Variance Criteria submission states that the distance between the subject house and the houses to both the east and the west is 25 feet, more than the minimum required, and includes a letter of support from one neighbor and a petition of support from several others. See Exhibit 9.
4. At the hearing, the Petitioner's architect, Saskia van Groningen, testified that the home on the subject property was constructed before the first Zoning Ordinance was enacted. Ms. van Groningen testified that the Petitioner was requesting to add a second story to the existing house, and that there would be no extension to the house in any direction except up. She then explained the pushing the side wall of the proposed second story two and a half feet back from the existing first floor wall, so that it comported with the required setback, would create a house that was awkward with rooms so small as to barely be usable. She further testified that there is a regular spacing between houses in this neighborhood, and that in addition to attempting to maintain the integrity of this bungalow-style house, she was also trying to preserve this existing spacing of houses. In response to a Board question asking if there were other two-story houses in the neighborhood, Ms. van Groningen testified that there are a number of houses that are adding or have added second stories, due to the number of families moving in and the small size of the houses.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested side lot line variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59.7.3.2.E.2.a.ii the proposed development uses an existing legal nonconforming property or structure;

The Board finds that the existing house on this property was built in 1925 (before the enactment of the County's first Zoning Ordinance) and does not conform to the required setbacks, making it a legal nonconforming structure. The Board further finds that the Petitioner is proposing to add a second story to this existing structure. Thus the Board finds that the proposed development uses an existing legal nonconforming structure, and satisfies this element of the variance test. See Exhibit 3.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Petitioner did not construct or have control over the placement of the existing house, which was built in 1925. See Exhibit 3. Thus the Board finds that the special circumstances or conditions applicable to this property were not the result of actions by the Petitioner.

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the requested variance is the minimum necessary to allow the proposed second story addition to use the footprint of the existing legal nonconforming house, which has been in place for over 90 years, and thus is the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would otherwise impose.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds that the construction of a second story addition continues the residential use of the home, and is consistent with the East Silver Spring Master Plan (2000), which seeks to "[p]reserve existing residential character, encourage neighborhood reinvestment, and enhance the quality of life throughout East Silver Spring."

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that allowing the construction of a second story on top of this existing home will not infringe on the use and enjoyment of abutting or confronting properties since it will not increase the existing side lot line setback encroachment. In addition, the Board notes that per the Statement, there is a pattern in this neighborhood in which homes are closer than allowed to one side lot line, but farther than required from the other, resulting in a spacing of homes, and that the grant of this variance will preserve this pattern. See Exhibit 3. Finally, the Board notes that the record contains a letter and a petition of support. See Exhibit 9.

Accordingly, the requested side lot line variance to allow the construction of a second story addition on this existing home is **granted**, subject to the following conditions:

1. The Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Katherine Freeman, with Bruce Goldensohn and Jon W. Cook in agreement,

and with Stanley B. Boyd, Vice Chair, not in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 17th day of April, 2019.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.